

9/21.5

CRAVATH, SWAINE & MOORE

ALLEN F MAULSBY  
STEWART R BROSS, JR  
JOHN R HUPPER  
SAMUEL C BUTLER  
BENJAMIN F CRANE  
JOHN F HUNT  
GEORGE J GILLESPIE, III  
THOMAS-D BARR  
MELVIN L BEDRICK  
GEORGE T LOWY  
ROBERT ROSENMAN  
ALAN J HRUSKA  
JOHN E YOUNG  
JAMES M EDWARDS  
DAVID G ORMSBY  
DAVID L SCHWARTZ  
RICHARD J HIEGEL  
FREDERICK A O SCHWARZ, JR  
CHRISTINE BESHAR  
ROBERT S RIFKIND  
DAVID BOIES  
DAVID O BROWNWOOD  
PAUL M DODYK  
RICHARD M ALLEN  
THOMAS R BROME  
ROBERT D JOFFE  
ROBERT F MULLEN  
HERBERT L CAMP  
ALLEN FINKELSON  
RONALD S ROLFE  
JOSEPH R SAHID  
PAUL C SAUNDERS

MARTIN L SENZEL  
DOUGLAS D BROADWATER  
JOSEPH A MULLINS  
MAX R SHULMAN  
STUART W GOLD  
JOHN W WHITE  
JOHN E BEERBOWER  
EVAN R CHESLER  
PATRICIA GEOGHEGAN  
D COLLIER KIRKHAM  
MICHAEL L SCHLER  
DANIEL P CUNNINGHAM  
KRIS F HEINZELMAN  
B ROBBINS KIESSLING  
ROGER D TURNER  
PHILIP A GELSTON  
RORY O MILLSON  
NEIL P WESTREICH  
FRANCIS P BARRON  
RICHARD W CLARY  
WILLIAM P ROGERS, JR  
JAMES D COOPER  
STEPHEN L GORDON  
ROBERT A KINDLER  
DANIEL L MOSLEY  
GREGORY M SHAW  
PETER S WILSON  
JAMES C VARDELL, JR  
ROBERT H BARON  
KEVIN J GREHAN  
W CLAYTON JOHNSON  
STEPHEN S MADSEN

WORLDWIDE PLAZA  
825 EIGHTH AVENUE  
NEW YORK, N. Y. 10019

TELEPHONE (212) 474-1000  
FACSIMILE (212) 474-3700

WRITER'S DIRECT DIAL NUMBER

RECORDATION NO. 16674-B FILED 1425

DEC 27 1989 -4 35 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 16674-C FILED 1425

DEC 27 1989 -4 35 PM

INTERSTATE COMMERCE COMMISSION

8-302A002

December 27, 1989

Southern Railway Company  
Equipment Trust Certificates, Series A

RECORDATION NO. 16674-A FILED 1425

DEC 27 1989 -4 35 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

16674

We are enclosing on behalf of Southern Railway Company two executed counterparts of each of the following Agreements:

1. Sublease Agreement No. 1 dated as of December 27, 1989, between RWC Limited, as Sublessor, and Southern Railway Company, as Sublessee, including Sublease Supplement No. 1 dated as of December 27, 1989, between RWC Limited, as Sublessor, and Southern Railway Company, as Sublessee.

2. Sublease Agreement No. 2 dated as of December 27, 1989, between RWC Limited, as Sublessor, and Southern Railway Company, as Sublessee, including Sublease Supplement No. 2 dated as of December 27, 1989, between RWC Limited, as Sublessor, and Southern Railway Company, as Sublessee.

3. Proceeds Allocation Agreement dated as of December 27, 1989, among Orix Aircraft Corporation, as Lessor, RWC Limited, as Sublessor, Southern Railway Company, as Sublessee, and Mercantile-Safe Deposit and Trust Company, as Trustee.

16674

The parties to the enclosed Agreements are:

Sublessor

RWC Limited  
c/o Natwest International  
Trust Corporation  
(Cayman) Limited  
P.O. Box 707  
West Bay Road  
Georgetown  
Grand Cayman, Cayman Islands  
British West Indies

Sublessee

Southern Railway Company  
3 Commercial Place  
Norfolk, Virginia 23510

Lessor

Orix Aircraft Corporation  
Project Finance & Leasing Marketing Dept.  
International Headquarters  
World Trade Center Building  
35 F 2-4-1 Hamamatsu-cho  
Minato-ku, Tokyo, 105 JAPAN

Trustee

Mercantile-Safe Deposit and Trust Company  
2 Hopkins Plaza  
Baltimore, Maryland 21203

The equipment covered by Sublease Agreement No. 1 and Sublease Agreement No. 2 are shown hereto in Exhibit 1 and Exhibit 2, respectively.

The equipment covered by the Proceeds Allocation Agreement is also shown in Exhibits 1 and 2 hereto.

All of the above Agreements are secondary documents to the Equipment Trust Agreement dated as of December 15, 1989, between Southern Railway Company and Mercantile-Safe Deposit and Trust Company, which was filed on December 27, 1989, at 9:15 a.m., Recordation No. 16674.

Enclosed is our check for \$45 for the required fee. Please accept for recordation one counterpart of each of the above Agreements, stamp the other counterpart with

your recordation number and return it to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

*Laurance V. Goodrich /urs*

Laurance V. Goodrich

Noreta R. McGee, Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

ACC copy

DEC 27 1989 -4 35 PM

**CARYN W. SHERMAN**  
**Notary Public, State of New York**  
**No. 31-4633991**  
**Qualified in New York County**  
**Commission Expires August 31, 1990**

Execution Copy  
RECEIVED NO. 16674  
DEC 27 1989 - 4 35 PM  
INTERSTATE COMMERCE COMMISSION

THIS PROCEEDS ALLOCATION AGREEMENT dated as of December 27, 1989 is made between ORIX AIRCRAFT CORPORATION, a Japanese corporation (the "Lessor"), RWC LIMITED, a Cayman Islands corporation (the "Lessee"), SOUTHERN RAILWAY COMPANY, a Virginia corporation (the "Sublessee"), and MERCANTILE SAFE-DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as trustee under the Equipment Trust Agreement referred to below (the "Trustee", which term shall include any successor trustee under such Equipment Trust Agreement).

PRELIMINARY STATEMENTS. 1. (a) The Lessor and the Lessee have entered into Lease Agreement No. 1 and Lease Agreement No. 2, together with the Lease Supplements thereto (the "Lease Supplements"), each dated as of the date hereof (together, the "Leases"), and (b) the Lessee and the Sublessee have entered into Sublease Agreement No. 2 and Sublease Agreement No. 1, and the Sublease Supplements thereto (the "Sublease Supplements"), each dated as of the date hereof (together, the "Subleases").

2. The Lessor, the Lessee and the Sublessee have entered into the Permitted Sublessee Liability Agreement dated as of the date hereof (the "Permitted Sublessee Liability Agreement").

3. The Sublessee and the Trustee have entered into the Equipment Trust Agreement dated as of December 15, 1989 (the "Equipment Trust Agreement") pursuant to which the Trustee has issued or will issue equipment trust certificates in order to provide financing to the Sublessee for the purpose of acquiring rights and interests in, and the use of, the Equipment (as defined below).

4. The parties wish to set forth the manner in which each may assert its respective remedies against the Equipment and to allocate the proceeds thereof in the manner hereinafter set forth. It is a condition precedent to the execution and delivery of the Leases and the Subleases that the parties hereto execute and deliver this Agreement.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions. (a) For purposes of this Agreement the following terms shall have the meanings set forth below:

"Agent" has the meaning assigned to that term in Section 7 hereof.

"Equipment" means the equipment described on Schedule A to the Equipment Trust Agreement and on Schedule I to each of the Lease Supplements and the Sublease Supplements.

"Interested Party" means each of the Lessor, the Lessee and the Trustee.

"Relevant Agreement" means each of the Leases, the Subleases and the Equipment Trust Agreement.

"Security Interest" means any security interest in the Equipment arising under a Relevant Agreement. For the purpose of this definition, "security interest" has the meaning assigned to that term in Section 1-201(37) of the Uniform Commercial Code as in effect in the State of New York from time to time.

(b) Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Leases. This Agreement shall be an "Operative Document", and the Security Interest of the Trustee shall be a "Permitted Lien", for purposes of the Leases and the Subleases. Where the provisions of this Agreement may be inconsistent or conflict with the provisions of any Operative Document, the provisions of this Agreement shall govern.

(c) The definitions set forth herein shall apply equally to the singular and plural forms of the terms defined.

SECTION 2. Exercise of Rights and Remedies. (a) Notwithstanding anything to the contrary contained in any Relevant Agreement, any other agreement to which an Interested Party may now or hereafter be a party or under applicable law, neither the Lessor nor the Lessee shall assert or exercise any remedy or seek any remedial action, or commence any action or proceeding in pursuit of any remedy or remedial action, in respect of the Equipment or any Interested Party, under or pursuant to any Relevant Agreement or applicable law or in furtherance of any right or benefit, actual or implied, contained or implied therein unless and until the Trustee has (i) declared an Event of Default under and as defined in the Equipment Trust Agreement pursuant to written instructions as therein provided and (ii) completed action to enforce rights and remedies under the Equipment Trust Agreement against the Equipment.

(b) The Trustee and the Sublessee shall be permitted to seek a temporary or permanent injunction against any other Interested Party or any other Person from any court

of competent jurisdiction to prevent any violation of this Agreement. Each Interested Party agrees to the entry of such a temporary or permanent injunction pending a hearing on the merits but prior to any notice of, or personal service of a complaint or order in, any such proceeding, because of the irreparable harm and injury which might otherwise occur to any other Interested Party or to the Sublessee due to the violation of the provisions hereof.

(c) In furtherance of any right or remedy exercised by the Trustee under the Equipment Trust Agreement with respect to the Equipment, each of the Lessor and the Lessee agrees, upon the written request of the Trustee, (i) to relinquish all of its right, title and interest in and to such Equipment to any purchaser of the Equipment by delivering to such purchaser a clean, full warranty bill of sale for such Equipment and (ii) to release any and all recordings, and filings and to take all such further action as the Trustee or such purchaser may reasonably request in order to allow such purchaser to acquire all right, title and interest in and to such Equipment free and clear of any and all liens, encumbrances, charges, leases and claims of whatever nature.

SECTION 3. Allocation of Proceeds. (a) Notwithstanding the time, date, manner or order of creation, attachment or perfection of the Security Interests, any provisions of applicable law or anything contained in any Relevant Agreement or any other agreement to which any Interested Party may now or hereafter be a party, each party hereto agrees that the proceeds from any sale or disposition of or other realization upon the Equipment pursuant to the enforcement of rights and remedies under a Relevant Agreement or under applicable law (other than the payments made by the Lessee or the Sublessee to the Lessor for the purchase of, or in relation to the transfer of title to, the Equipment under the Leases or the Subleases) shall be applied only in the following order:

first, to the payment and discharge in full of all obligations and liabilities of the Sublessee under the Equipment Trust Agreement in the priority and in the manner therein provided;

second, to the payment and discharge in full of all obligations and liabilities of the Sublessee to the Lessor under the Lease and the Permitted Sublessee Liability Agreement; and

third, to the payment and discharge in full of all obligations and liabilities of the Sublessee to the Lessee under the Sublease.

Notwithstanding anything to the contrary contained in Clause 14.3 or Clause 16.2(b) of each Lease and each Sublease, to the extent any sums remain following the application of proceeds set forth above, such sums shall be for the account of the Sublessee. The Lessor and the Lessee agree that the preceding sentence shall survive the payment and discharge in full of all obligations of the Sublessee under the Equipment Trust Agreement.

(b) If any party hereto receives any amount or property on account of proceeds from any sale or disposition of or other realization upon the Equipment pursuant to a Relevant Agreement to which such party is not entitled under Section 3(a) above, such party shall hold such amount or property in trust for the other parties and shall promptly distribute such amount or property to such other parties in accordance therewith.

SECTION 4. Amendment and Waivers. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, modified or waived except by an instrument in writing signed by each party hereto.

SECTION 5. Successors and Assigns. No party hereto shall have the right to assign its rights hereunder or any interest herein without the prior written consent of each other party hereto. The terms of this Agreement shall be binding upon, and inure to the benefit of, each of the parties hereto, their respective successors and permitted assigns.

SECTION 6. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 7. Submission to Jurisdiction. Each of the parties hereto (a) irrevocably submits to the exclusive jurisdiction of the courts of the State of New York and the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding of any type whatsoever arising out of this Agreement, the subject matter hereof or any of the transactions contemplated hereby, and (b) to the extent permitted by applicable law, hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the above named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper,



or that this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each of the parties hereto hereby agrees that process may be served upon, in the case of the Lessor, Orix USA Corporation, with offices at 780 3rd Avenue, New York, New York 10017, in the case of the Lessee, National Westminster Bank PLC, with offices at 175 Water Street, New York, New York 10038, and, in the case of the Sublessee and the Trustee, CT Corporation, with offices at 1633 Broadway, New York, New York 10019 (in each case, its "Agent"), which each such party hereto hereby irrevocably designates and appoints as its attorney-in-fact to receive service of process in any action, suit or proceeding with respect to any matter as to which it submits to jurisdiction as set forth above, it being agreed that service upon its Agent shall constitute valid service upon such party or its respective successors or assigns (as the case may be). Each of the parties hereto further agrees and covenants that it shall give notice to each other party in the event that its Agent ceases to be its Agent hereunder and, so long as it retains any right, title or interest in or to any Item of Equipment, it shall maintain a duly appointed agent for the service of summonses and other legal process in the city of New York. In the event of the transfer of all or substantially all the assets and business of an Agent to any other corporation, by consolidation, merger, sale of assets or otherwise, such other corporation shall be substituted hereunder for such Agent with the same effect as if named herein in place thereof. Nothing in this Section 7 shall affect the right to serve process in any other manner permitted by law. Final judgment against any of the parties hereto obtained in any suit in such courts shall be conclusive and, to the extent permitted by applicable law, may be enforced in other jurisdictions by suit on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness therein described. Each of the parties hereto hereby irrevocably and unconditionally waives any immunity from suit, judgment, execution, set-off, attachment, arrest, specific performance, injunction or other judicial order or remedy to which it or any of its properties may be entitled at present or in the future in any jurisdiction in respect of, and consents generally to the giving of any relief or the issue of any process, including without limitation the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment in connection with, any legal action or proceedings with respect to this Agreement, the subject matter hereof or any transactions contemplated hereby.

SECTION 8. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, or by prepaid telex or telegram (with messenger delivery specified in the case of a telegram), or by telecopier, or by prepaid courier service, and shall be deemed to be given for purposes of this Agreement on the day that such writing is received by the intended recipient thereof in accordance with the provisions of this Section 8. Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this Section 8, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses set forth below (or to their respective telex or telecopier numbers) under their respective signatures.

SECTION 9. English Translation. All notices, communications, certificates and other documents given hereunder, unless submitted in the English language, shall be accompanied by the copy of an English translation thereof for each copy of the foregoing so submitted and the English version shall govern in the event of any conflict with the non-English version thereof. In the case of any conflict between the English translation of any notice, communication, certificate or other document delivered hereunder, and the non-English version thereof, the English translation thereof shall control.

SECTION 10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one instrument.

SECTION 11. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 12. Headings. The headings in this Agreement are for the purpose of reference only and shall not limit or define the meaning hereof.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. § 1746 under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct document and was executed and delivered on the date indicated below its signature.

ORIX AIRCRAFT CORPORATION

By 

Title:

Executed on December 27, 1989

Address: Project Finance &  
Leasing Marketing Dept.  
International Hdqtrs.  
World Trade Center Bldg.  
35F 2-4-1 Hamamatsu-cho  
Minato-ku, Tokyo  
105 Japan  
Attention: General Manager

Telephone: 81-3-435-6782  
Telecopy: 81-3-434-7970

RWC LIMITED

By \_\_\_\_\_

Title:

Executed on December 27, 1989

Address: c/o NatWest International  
Trust Corporation (Cayman)  
Limited  
P.O. Box 707  
West Bay Road  
Georgetown  
Grand Cayman, Cayman Islands  
British West Indies  
Attention: Managing Director

Telephone: (809) 947-4777  
Telecopy: (809) 947-4799

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares pursuant to 28 U.S.C. § 1746 under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct document and was executed and delivered on the date indicated below its signature.

ORIX AIRCRAFT CORPORATION

By \_\_\_\_\_  
Title:

Executed on December 27, 1989

Address: Project Finance &  
Leasing Marketing Dept.  
International Hdqtrs.  
World Trade Center Bldg.  
35F 2-4-1 Hamamatsu-cho  
Minato-ku, Tokyo  
105 Japan  
Attention: General Manager

Telephone: 81-3-435-6782  
Telecopy: 81-3-434-7970

RWC LIMITED

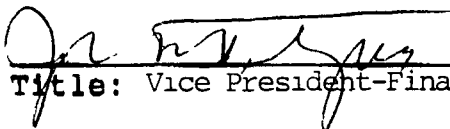
By *Dianne Come*  
Title: *Attorney in Fact*

Executed on December 27, 1989

Address: c/o NatWest International  
Trust Corporation (Cayman)  
Limited  
P.O. Box 707  
West Bay Road  
Georgetown  
Grand Cayman, Cayman Islands  
British West Indies  
Attention: Managing Director

Telephone: (809) 947-4777  
Telecopy: (809) 947-4799

SOUTHERN RAILWAY COMPANY

By   
Title: Vice President-Finance

Executed on December 27, 1989

Address: Three Commercial Plaza  
Norfolk, Virginia 23510  
Attention: Vice President  
and Treasurer

Telephone: (804) 629-2600  
Telecopy: (804) 629-2798

MERCANTILE-SAFE DEPOSIT  
AND TRUST COMPANY,  
as Trustee

[seal]

Attest:

Corporate Trust  
Officer

By \_\_\_\_\_  
Title:

Executed on December 27, 1989

Address: P.O. Box 2258  
Two Hopkins Plaza  
Baltimore, Maryland 21203  
Attention: Corporate Trust  
Department

Telephone: (301) 237-5900  
Telecopy: (301) 237-5437

## SOUTHERN RAILWAY COMPANY

By \_\_\_\_\_


Title:

Executed on December 27, 1989

Address: Three Commercial Plaza  
Norfolk, Virginia 23510  
Attention: Vice President  
and Treasurer

Telephone: (804) 629-2600  
Telecopy: (804) 629-2798

[seal]  
Attest:

  
Corporate Trust Officer

MERCANTILE-SAFE DEPOSIT  
AND TRUST COMPANY,  
as Trustee

By 

Title: Vice President

Executed on December 27, 1989

Address: P.O. Box 2258  
Two Hopkins Plaza  
Baltimore, Maryland 21203  
Attention: Corporate Trust  
Department

Telephone: (301) 237-5900  
Telecopy: (301) 237-5437